

General Information Letter: The determination of whether or not a taxpayer has nexus depends on the specific facts and circumstances of each case, and is generally not an appropriate subject for letter rulings.

February 16, 2001

Dear:

This is in response to your letter dated January 4, 2001 in which you request a letter ruling. The nature of your letter and the information you have provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding upon the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be viewed on our website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Your letter states as follows:

We are a business whose plant and office are located in Wisconsin but we do sell to businesses in Illinois. We are currently being audited by the Wisconsin Department of Revenue. I have faxed them Title 86 Part 100 Section 100.7020 of the Illinois Department of Revenue Regulations, but they want a legal letter ruling for our specific circumstances regarding our nexus in Illinois for corporate income tax purposes. From 1997 to present we did not have an actual employee but we did have contracted representatives in Illinois who were compensated on a commission for gross sale basis. The purchase order and invoicing took place between the customer and xxxxxxxxxxxxxxxx and did not involve these agents. Furthermore, these agents did represent other businesses. However, we were their exclusive supplier of screen printing.

Under these circumstances does Illinois consider xxxxxxxxxxxxxxxx as having nexus for corporate income tax purposes?

RULING

The determination of nexus is extremely fact-dependent. For this reason the Department does not issue private letter rulings on the issue of whether a particular taxpayer has nexus with Illinois. Such determination may be made only in the context of an audit. However, you may note the following general information.

1. Constitutional Jurisdiction

The Due Process and Commerce Clauses of the Federal Constitution limit the power of States to subject foreign corporations to tax. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v. North Dakota, 504 U.S. 298, 112 S.Ct 1904 (1992)). The Commerce Clause requires that the tax be applied to an activity with a substantial nexus with the taxing state. (Id.) Unless protected by Public Law 86-272, a foreign corporation has the requisite nexus to subject it to Illinois income tax where any part of its income is allocable to Illinois in accordance with the provisions of Article 3 of the Illinois Income Tax Act (35 ILCS 5/301-304, 308). A foreign corporation must apportion part of its income to Illinois in accordance with Article 3 of the IITA where during the taxable year it makes sales in this

State. Your letter indicates that xxxxxxxxxxxxxxxx makes sales to Illinois businesses. Therefore, the Federal Constitution does not bar Illinois from subjecting xxxxxxxxxxxxxxxx to Illinois income tax.

2. Public Law 86-272

Public Law 86-272, 73 Stat. 555, 15 U.S.C.A. §381 (1959) provides as follows:

(a) Minimum standards

No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

- (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
- (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

...

(c) Sales or solicitation of orders for sales by independent contractors

For purposes of subsection (a) of this section, a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors, or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, of tangible personal property.

Business activities constituting "solicitation of orders" under Public Law 86-272 include activities ancillary to requests for purchases. (Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co., 505 U.S. 214, 227, 112 S.Ct. 2447, 2456 (1992)) Ancillary activities are those activities that serve no independent business function apart from their connection to the solicitation of orders. (Id.) Finally, a taxpayer does not forfeit protection under Public Law 86-272 by engaging in *de minimis* activity that exceeds solicitation of orders. (Wrigley, 505 U.S. at 231, 112 S.Ct. at 2458)

As the above indicates, Illinois may not subject to tax income derived in Illinois by a taxpayer protected under Public Law 86-272. Therefore, xxxxxxxxxxxxxxxx has nexus with Illinois for income tax purposes, unless in this case Public Law 86-272 precludes the State from imposing that tax.

As stated above, this is a GIL. Accordingly, it does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions concerning this GIL you may contact Legal Services Division at (217) 782-7055. If you

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have further questions related to the Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)